
**BEFORE THE
UNITED STATES TRADE REPRESENTATIVE**

STEEL

**MEMORANDUM FOR THE TRADE POLICY STAFF COMMITTEE
ON BEHALF OF EUROFER FOR TIN MILL PRODUCTS**

January 4, 2002

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EXECUTIVE SUMMARY

1. The President should consider the ITC vote on tin mill as a negative vote and should impose no import restrictions on tin mill products:

- Three of the four Commissioners examining tin mill as a separate product concluded that imports are not a cause of serious injury to the domestic industry.
- The third affirmative vote is that of a Commissioner who included Canada in her analysis, when all five other Commissioners excluded Canada as a source of injury. This vote, therefore, is a deficient basis upon which to impose import restrictions, and such a result likely would be vulnerable at the WTO.

2. As three Commissioners have recognized, the steep and long-term decline in demand for tin mill products is the underlying cause of injury to the domestic industry.

3. The U.S. tin mill industry is already undertaking a restructuring that will eliminate outdated capacity. Further relief through import restrictions is unnecessary to improve the health of the industry.

4. An antidumping order imposed on Japan last year has eliminated the *only* surge of imports that occurred during the period of investigation, and total imports also have dropped sharply as demand has fallen.

5. Many tin mill imports – especially those from the European Union – are high-priced specialty products that are not available in the United States.

- In strong wording, the three Commissioners voting in the negative have concluded that the domestic industry has been unable to show that it can produce a “substantial portion” of the imported tin mill products.
- Two of the Commissioners voting in the affirmative have recommended exclusion of certain specialty tin mill products.
- European tin mill imports oversell U.S. tin mill, and the domestic industry has admitted that European imports are not injurious.

I. INTRODUCTION

In their Sec. 201 Report to the President on Steel, four of the six International Trade Commissioners determined that tin mill steel is a separate product from other flat steel products. Of these four Commissioners, three have concluded that imports are not a substantial cause of injury to the U.S. tin mill industry. The Commission's report on steel comes before the Administration, though, with a peculiar 3-3 vote on tin mill.

To consider the 3-3 vote of the Commission as an affirmative basis for imposing import restrictions, the Administration must include the votes of two Commissioners who included tin mill products with all other flat steel products, when the majority of the Commission has determined that tin mill is a separate product. Furthermore, the third affirmative vote (that of Commissioner Miller) was based on an inclusion of Canada in her analysis, when all five other Commissioners excluded Canada as a cause of injury to the U.S. industry. We believe that these three votes are a strange concoction upon which to justify import restrictions. In all practicality, the Administration should view the Commission's determination as a negative vote on injury with respect to tin mill products.

Even putting aside the inconsistencies of the affirmative votes, it is entirely appropriate for the President, presented with a 3-3 tie, to decline to impose a remedy, given the strong arguments presented by three Commissioners that other factors -- particularly the steep and long-term decline in demand for tin mill products -- are a greater cause of injury to the domestic industry.

Furthermore, we note that from these Sec. 201 proceedings we can draw at least one conclusion upon which both the respondents and domestic companies can agree: There is a

profound need for restructuring within the U.S. industry, and an equally urgent need to eliminate excess and antiquated capacity both in the United States and around the globe. The U.S. tin mill industry has already recognized the need for restructuring, and within the last several months U.S. tin mill producers have announced plans to eliminate excess capacity, thereby increasing their competitiveness. These measures, which will improve the health of the U.S. industry, make import restrictions all the more unnecessary to “facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.”¹

Finally, we urge the Administration to carefully consider the nature of tin mill imports, especially the specialty products from the European Union. The *only* surge of imports within the period examined by the Commission was a surge of *Japanese* imports in 1999. Since then, an antidumping order has completely excluded low-priced Japanese imports from the U.S. market. Total imports have also receded due to declining demand in the U.S. market. Remaining imports (the bulk of which come from Canada and the European Union) consist largely of high-priced niche products which complement, rather than displace, U.S. production. Import restrictions on these products would harm U.S. consuming industries while providing no benefit to the U.S. industry.

¹ 19 U.S.C. § 2251(a)

II. THREE OF FOUR COMMISSIONERS EXAMINING THE TIN MILL INDUSTRY SEPARATELY HAVE FOUND THAT IMPORTS ARE NOT A CAUSE OF SERIOUS INJURY

Three of the four Commissioners examining tin mill steel as a separate industry concluded that increased imports are not a substantial cause of serious injury to the U.S. tin mill industry.² These Commissioners found the deteriorated state of the U.S. industry rooted in other factors, particularly the long-term continuing decline in demand for tin mill products, the increased purchasing power of the increasingly consolidated can manufacturing industry, and the fact that a substantial portion of imports consists of products unavailable domestically.³

Importantly, *all four* Commissioners examining tin mill steel separately, including Commissioner Miller, found that the evidence demonstrates that the domestic industry already was experiencing “significant overall impairment” at the beginning of the Commissions’ period of investigation.⁴ This finding is unsurprising, given the dramatic long-term decline in demand for tin mill steel, which began in 1970’s when the beverage industry shifted to use of aluminum.⁵ Today, tin packaging products face increasingly stiff competition from other forms of packaging,

² We agree with Commissioners Koplan, Okun, Miller and Hillman that tin mill steel should be considered as an industry distinct from other flat steel products. *See* Determinations and Views of Commissioners, *Steel*, Inv. No. TA-201-73, USITC Pub. No. 3479 (Dec. 2001) at 49-51.

³ *Id.* at 81.

⁴ *Id.* at 77.

⁵ Even before the period of investigation in this Sec. 201 investigation, apparent consumption of tin mill fell from 6,223 million short tons in 1969 to 4,128 million short tons in 1995. Joint Respondents’ Tin Mill Prehearing Injury Brief at 16. During the POI, demand fell further, to 3,744 million short tons in 2000. *Steel* at FLAT-47.

particularly in the food industry. Also, a shift to lighter-weight steel in the can industry has reduced tin mill demand even further.⁶

Yet, while demand for tin mill products has dropped precipitously, “the domestic industry has been very slow to rationalize capacity based on the permanent losses in demand,” in the words of the Commissioners voting in the negative on injury.⁷ The capacity overhang has been too costly a burden for U.S. producers to be healthy: low capacity utilization has forced producers to spread their high fixed costs over fewer tons of production, driving up factory costs per ton at the expense of operating profits. Thus, the industry’s performance has been consistently poor, even before the period of investigation, and even as imports have receded.⁸

The U.S. industry itself has recognized the imbalance between capacity and demand, and recently has undertaken a restructuring which will improve the financial health of the industry.⁹ Specifically, U.S. Steel has acquired LTV’s tin mill operations and has announced significant capacity reductions.¹⁰ This move towards greater efficiency is precisely the type of restructuring that the Bush Administration is proposing on a global basis. Further relief through restrictive

⁶ *Steel* at 79.

⁷ *Id.* at 80.

⁸ *Id.* at 77 and FLAT-29.

⁹ We note that even if imports had held constant as a percentage of apparent consumption during the Commission’s period of investigation, U.S. capacity utilization would still have languished at a 70+ percent utilization rate. *See* Joint Respondents’ Tin Mill Pre-Hearing Injury Brief at 24-27. Clearly, the most important remedial step for this industry will be the industry’s own restructuring plan to recognize the permanent loss in demand.

¹⁰ As noted in the Commission’s report to the President, these capacity reductions are too recent to be fully reflected in the Commission data. *Steel* at 79 n. 413, and at 80.

import measures is unnecessary to achieve the facilitation of adjustment envisioned in the Sec. 201 statute.

III. THE ONE SURGE IN IMPORTS DURING THE PERIOD OF INVESTIGATION HAS BEEN REMEDIED BY AN ANTIDUMPING ORDER AGAINST JAPAN

In October 1999, U.S. tin mill producers petitioned the U.S. government for relief from low-priced imports of tin mill products from Japan – half of all imports at the time. The 1999 surge in Japanese imports was the *only* surge in imports occurring during the period examined by the Commission in the case before us.

As a result of the Commission's affirmative ruling in August 2000, an antidumping order was imposed on imports from Japan.¹¹ Thereafter, the overall volume of tin mill imports from Japan plunged, with remaining imports of tin mill from Japan limited to niche products not produced in the United States – products which were excluded from the antidumping investigation by the petitioners themselves *and* which were excluded in the U.S. Trade Representative's request to the ITC to initiate this Sec. 201 investigation.¹²

¹¹ *Tin- and Chromium-Coated Steel Sheet from Japan*, Inv. No. 731-TA-860 (Final), USITC Pub. 3337 (Aug. 2000). A few days ago, the Court of International Trade remanded this Title VII case to the Commission, asking a more thorough explanation of the affirmative determination. *Nippon Steel Corporation v. United States*, Slip Op. 01-154, (C.I.T. Dec. 31, 2001). The outcome of that remand cannot be predicted at this time, and the antidumping order against Japanese imports remains in effect pending the remand result and any further appeals. Of course, if this process were to result in a determination that Japanese imports – the only imports to have surged during the period – did not cause even material injury, then it would be impossible to base Sec. 201 import restrictions on any claim that these imports cause or threaten serious injury.

¹² See Letter from Ambassador Zoellick to the Commission dated June 22, 2001. Imports from Japan have dropped from 111,5000 short tons in January-June 2000 to 37,188 short tons in the corresponding period of 2001, a decline of 67 percent. ITC Dataweb.

In the Title VII proceeding, the domestic industry testified to the Commission that the Japanese imports were the cause of material injury to U.S. producers and that imports from Canada and the European Union were not a source of *material* injury.¹³ The domestic industry now asks the Administration to consider that total imports are the cause of *serious* injury (a higher standard), all in the face of undisputed evidence that: (a) the injurious Japanese imports have been totally eliminated from the market; (b) total world imports also have sharply declined;¹⁴ and (c) the vast bulk of remaining imports are Canadian and European products which oversell U.S. products and which the U.S. producers are on record as acknowledging that they do not cause material, let alone serious, injury. These facts simply do not support import relief under the Sec. 201 standard.

IV. THE THIRD AFFIRMATIVE VOTE IN FAVOR OF INJURY AND REMEDY FOR TIN MILL PRODUCTS IS A DEFICIENT BASIS UPON WHICH TO IMPOSE A REMEDY

The Commission clearly has ruled that Canada and Mexico should be excluded from any remedy imposed on tin mill.¹⁵ The three Commissioners voting in the negative on injury

¹³ At the staff conference in the preliminary investigation, Mr. Riederer, CEO of petitioner Weirton Steel, testified that “European prices for tin mill products have gone up. Consequently...we have not seen the same kind of effect from Europe as we have seen from Japan.” *Tin- and Chromium-Coated Steel Sheet from Japan*, Staff Conference Transcript at 160-61. Also, Mr. Schagrin, counsel for petitioners, concluded that “[I]mports from Japan increased at a much faster rate than imports from Europe, and import pricing from Japan fell at a much, much greater rate than pricing from Europe. We really think we found the right scoundrel here.” Hearing Transcript at 160.

¹⁴ Comparing annualized 2001 data to 1999 levels, overall import volume has declined 32%. *Steel at Flat-14*.

¹⁵ *Id.* at 1 n. 3, and 25 n. 3.

(Commissioners Koplan, Okun and Hillman) obviously impute no injury to the NAFTA parties, as they determined that there was no serious injury caused to the domestic industry by total imports. Two of the Commissioners voting in the affirmative on injury (Commissioners Bragg and Devaney) excluded Canada both from their determination on injury and their recommendations on remedy.¹⁶ Commissioner Miller, though, who cast the third affirmative vote, included Canada in both her injury analysis and her remedy recommendation.¹⁷ Thus, the difference in this case between a negative vote and a tie vote on tin mill products hinges on one Commissioner's inclusion of Canada when the five other Commissioners have concluded that Canadian imports are non-injurious.

To impose import restrictions on total world import on the basis of Commissioner Miller's third vote would smack of unfairness, given that Canada would be excluded from remedy on the basis of the overall Commission vote. Furthermore, the third and "decisive" vote would likely be viewed as legally deficient by the WTO, given recent Appellate Body and Panel decisions that require that if NAFTA parties are excluded from Sec. 201 remedy, the underlying justification for the remedy must be based on an explicit analysis that excludes NAFTA imports.

Specifically, in *Wheat Gluten*, the WTO Appellate Body found:

...{A}lthough the USITC examined the importance of imports from Canada separately, it did not make any explicit determination relating to increased imports, *excluding imports from Canada*. In

¹⁶ *Id.* at 25 n. 3, 69-79 (Views on Injury of the Commission), 312 (Separate Views on Injury of Commissioner Bragg), 382 (Views on Remedy of the Commission) and 542-43 (Separate Views on Remedy of Commissioner Bragg).

¹⁷ *Id.* at 317-318 (Separate and Dissenting Views of Commissioner Miller on Injury With Respect to Tin Mill Products) and at 551-3 (Views of Commissioner Miller on Remedy With Respect to Tin Mill Products).

other words, although the safeguard measure was applied to imports from all sources, excluding Canada, the USITC did not establish explicitly that imports from *these* same sources, excluding Canada, satisfied the condition for the application of a safeguard measure, as set out in Article 2.1 and elaborated in Article 4.2 of the Agreement on Safeguards. (Emphasis in text.)¹⁸

While Commissioner Miller has tried to take the position in a footnote that she would have reached an affirmative conclusion on injury even if she had excluded Canada, it is clear from her written opinion that the volume of imports from Canada weighed heavily in her conclusion that total imports have caused serious damage to the U.S. industry. Thus, it would be both illogical and inconsistent with WTO principles to impose a remedy based on Commissioner Miller's third affirmative vote.

The record of the investigation provides scant evidence that, excluding Canada, remaining imports would satisfy the Agreement on Safeguard's requirements for the application of the safeguard measure. The 1999 surge in imports, which Commissioner Miller fingers as the cause of injury, was a surge in imports from Japan. These low-priced imports now have been precluded from the U.S. market by the antidumping order imposed in 2000.¹⁹ And total imports have declined steadily since 1999 as the result of falling demand. Furthermore, imports from

¹⁸ *United States – Definitive Safeguard Measures on Imports of Wheat Gluten From The European Communities*, Report of the Appellate Body, WTD/DS166/AB/R, July 31, 2000, ¶ 98.

¹⁹ Commissioner Miller notes that tin mill imports from Japan account for 22 percent of total imports by value. Measured by value, Japan's large share of imports is understandable, given that the antidumping order effectively limits Japanese imports to high-value, niche products that are unavailable in the United States and are excluded from the antidumping order. In fact, Japanese AUV's (\$718 in year-to-date 2001) are extraordinarily high compared to AUV's of other imports and to U.S. prices. ITC Dataweb. There can be no credible argument that these imports have caused the price suppression found by Commissioner Miller to have injured the U.S. industry.

the two other major sources of tin mill – Canada and Europe – are mostly niche products which oversell U.S. products. Given that Canada now is the single largest supplier of tin mill products to the United States, Commissioner Miller has not given a convincing argument that imports from other sources have caused serious damage.

V. EUROPEAN IMPORTS ARE HIGH-PRICED AND NON-INJURIOUS

Access to specialized products is crucial to the competitiveness of the U.S. can manufacturing industry. Already, U.S. can makers face stiff competition from alternative forms of packaging. While just-in-time delivery requirements necessitate that the can makers purchase nearly all of their tin mill needs from producers in the United States, the can makers nevertheless must resort to imports to source products unavailable domestically. Disrupting imports of these tin mill products would have the ironic effect of harming the competitiveness of the U.S. can makers – upon whom the U.S. tin mill industry relies for its livelihood. The strange result would be to accelerate the shift to alternative packaging, bringing a further permanent decline in demand for tin mill products.

The Commissioners voting in the negative on injury recognize that imports play a necessary role, noting:

U.S. purchasers of tin mill products accounting for the vast majority of U.S. apparent consumption attested that a substantial portion of their imports consist of tin mill products that are not available from domestic producers. This evidence, which with one exception has not been refuted by the domestic producers, indicates that in 2000 approximately [] of imports subject to this investigation reportedly were not available from domestic producers. Moreover, domestic producers provided no evidence to

support its opposition regarding domestic availability for those products, except to comment that [].²⁰

European producers in particular play a critical role in supplying the U.S. can industry with specialized products. Average unit values (AUV's) of tin mill imports from the EU exceed the AUV's of other tin mill imports (excluding Japan, whose tin mill imports are high-quality products excluded by petitioners themselves from the scope of the antidumping order).

Likewise, EU tin mill oversells U.S. tin mill.²¹

TIN MILL AUV'S: 1996-JUNE 2001 (\$/short ton)²²

	1996	1997	1998	1999	2000	J-J2001
EU and Norway	\$661	\$659	\$650	\$595	\$601	\$614
Other Subject (Excluding Japan)	\$608	\$614	\$722	\$517	\$499	\$501
Domestic	\$617	\$617	\$612	\$589	\$590	\$591
Europe premium over other subject imports ²³	8.6%	7.2%	-9.9%	15.1%	20.4%	22.6%
Europe premium over domestic	7.1%	6.8%	6.2%	1%	1.9%	3.9%

²⁰ *Steel* at 80-81 (footnotes and bracketed APO data omitted).

²¹ ITC Dataweb and FLAT 97.

²² ITC Dataweb. Subject imports do not include Canada or Mexico, which have been excluded by the Commission in the recommendation to the President.

²³ Other subject imports excludes Japan since Japanese imports consist solely of tin mill products excluded from this investigation.

Clearly, EU tin mill is not the source of the domestic industry's problems. The domestic industry explicitly admitted this in the public record of the antidumping proceeding against Japan in 2000.²⁴ Since then, tin mill imports from the EU have remained stable and non-injurious. In fact, the AUV's of tin mill products imported from the EU rose from 1999 to 2000.²⁵ And as further proof that European imports are non-injurious, we urge the Administration to consider the domestic industry's own words in the business confidential version of the post-hearing injury brief to the Commission filed by Weirton Steel and other domestic companies.²⁶

Ultra-wide tin mill steel is an excellent example of the type of specialty products supplied to the U.S. market by European producers.²⁷ U.S. can manufacturers have been unable to find a domestic source for this product and would suffer unnecessary disruptions in production should wide-width tin mill steel be subject to import restrictions. For example, Silgan Containers, the largest consumer of tin mill products in the country, has used the wider width tin coils to

²⁴ At the staff conference in the preliminary investigation, Mr. Riederer, CEO of petitioner Weirton Steel, testified that "European prices for tin mill products have gone up. Consequently...we have not seen the same kind of effect from Europe as we have seen from Japan." *Tin- and Chromium-Coated Steel Sheet from Japan*, Staff Conference Transcript at 160-61. Also, Mr. Schagrin, counsel for petitioners, concluded that "{I}mports from Japan increased at a much faster rate than imports from Europe, and import pricing from Japan fell at a much, much greater rate than pricing from Europe. We really think we found the right scoundrel here." Hearing Transcript at 160.

²⁵ ITC Dataweb.

²⁶ Domestic Producers' Posthearing Brief: Flat Products, Submitted by The Minimill Coalition (Flat), Gallatin Steel Company, Geneva Steel Company, IPSCO Steel Inc., Nucor Corporation, Rouge Steel Company, Steel Dynamics, Inc., WCI Steel, Inc., Weirton Steel Corporation, and the Independent Steelworkers Union (September 28, 2001) at 10, second paragraph.

²⁷ Requests for exclusion of wide-width tin mill steel have been filed with the TPSC by Corus Group plc, Rasselstein Hoesch GmbH, Usinor, the U.S. Can Manufacturers Coalition, and Silgan Containers.

improve its productivity in the manufacture of tops and bottoms for institutional/restaurant size food cans. To use the wide-width coils, Silgan has developed special machinery which cannot run narrower widths of tin coil. Silgan estimates that if its access to imported wide-width tin mill steel is disrupted, it will lose 16 percent of its output.²⁸

The inability of the domestic industry to show domestic availability of a substantial portion of imports figured prominently in the analysis of the three Commissioners voting in the negative on injury. Also, Commissioners Miller and Devaney have recommended exclusion of several tin mill products, despite their affirmative votes. With respect to wide-width tin mill, Commissioner Miller recommended exclusion, and we also note that in submissions filed with the TPSC, the U.S. industry has essentially conceded the lack of domestic supply.²⁹ In sum, the domestic industry's inability to show U.S. production of the products for which exclusion has been requested – when these products comprise, in the words of three Commissioners, a “substantial portion” of imports³⁰ – is yet another reason why *all* tin mill products should be excluded from import restrictions.

²⁸ Exclusion request submitted by Silgan Containers to TPSC, Nov. 12, 2001, at 3.

²⁹ We note that there are no comments whatsoever posted on the U.S. Trade Representative web site from Weirton Steel, a producer of tin mill, regarding tin mill exclusion requests. Other integrated mills have indicated to the TPSC that, with respect to tin mill in widths over 40 inches, “Provided that no U.S. supplier can produce this product, Domestic Producers have no objection to excluding this product.” They provide no information, though, to substantiate the existence of domestic production. *See* Domestic Industry Response to Product Exclusion Requests Filed on Behalf of Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation and United States Steel LLC, filed before the TPSC (December 5, 2001), Tin Mill Products at 3.

³⁰ *Steel* at 81.

VI. CONCLUSION

For the reasons laid out above, we believe that any import restrictions on tin mill products are inappropriate.

Respectfully submitted,

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